Filed 2/18/05 Baker v. McGraw-Hill Broadcasting Co. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

TREVES BAKER, Plaintiff and Respondent, v. MCGRAW-HILL BROADCASTING COMPANY, INC., et al., Defendants and Appellants.	D043765 (Super. Ct. No. GIC817698)

APPEAL from an order of the Superior Court of San Diego County, William R. Nevitt, Jr., Judge. Reversed.

McGraw-Hill Broadcasting Company, Inc., KGTV Channel 10, and Martha (Marti) Emerald (at times collectively referred to as KGTV) appeal the denial of their special motion to strike made pursuant to the anti-SLAPP statute (strategic lawsuit against public participation), Code of Civil Procedure section 425.16 (hereafter section 425.16). KGTV contends the trial court erred in finding Treves Baker was likely to prevail on his cause of action for defamation. We reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND

Beginning in 1995, Baker was employed by the Sweetwater Union High School District (the District) as an "Instructional Health Care Specialist" to work with severely disabled students. Sweetwater required an employee in this position to be a Licensed Vocational Nurse (LVN).

Baker had obtained his LVN license in 1994 through the California Board of Vocational Nursing and Psychiatric Technicians (Board). This license was effective until February 28, 1998. Baker did not renew his license but continued to represent himself as an LVN.

On February 21, 2003[1], Baker's supervisor, Angela Hawkins, learned Baker's license had lapsed, discussed the matter with him, told him to correct the problem and reassigned him from nursing to scheduling duties. In response, Baker submitted an application for "renewal" of his license to the Board.

On March 3, the Board erroneously sent Baker a form letter, where the paragraph labeled "License Renewal Receipt" was check-marked and indicated Baker's "New Expiration Date" was February 28, 2004. This paragraph also stated " 'a licensee who has renewed his/her license PRIOR TO ITS EXPIRATION DATE may practice legally between the expiration date and receipt of the renewal license.' " The form letter additionally contained paragraphs for a "Delinquent License Receipt" and an "Inactive License Receipt" noting that a licensee could not legally practice with an inactive license.

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1 Unless otherwise indicated, all further dates refer to 2003.

Baker showed the form letter to his supervisors, Angela Hawkins and Frederick Ferguson. Ferguson, after carefully reading the letter, told Baker that as he interpreted the letter, only individuals who had applied to renew their licenses prior to the expiration date could practice as an LVN prior to the renewal of the license and since Baker's license had lapsed before he applied for a renewal, Baker was not then entitled to practice as an LVN.

A few days later, on March 7, the Board informed Baker by telephone and in writing that the March 3 form letter was erroneous, he would have to reapply for (rather than renew) his LVN license, he would have to retake the licensing exam, and he could not practice as an LVN until his license had been reinstated. This process would take many weeks. Baker told his supervisors about the March 7 letter and kept them apprised of his conversations and correspondence with the Board.

On March 7, an unnamed person contacted Emerald and told her Baker was performing invasive medical procedures, such as catheterizing a handicapped student, without an LVN license. Emerald is the co-producer and host for KGTV's "TroubleShooter," a segment that focuses on consumer issues. In response to this information, Emerald contacted the Board who informed her of its March 3 and March 7 letters to Baker and told her Baker would have to reapply for a license. The Board also told her enforcement proceedings were underway against Baker as well as an investigation to determine if any harm had been caused.

On March 7, Emerald also contacted Baker's supervisor, Hawkins. During the interview, Hawkins told Emerald that Baker's license had been renewed. This statement

was based on Hawkins's reading of the March 3 form letter. Hawkins later realized she had been mistaken; she was with Baker when the Board telephoned him to inform him the March 3 letter had been sent to him in error and that he would have to reapply for an LVN license.

On March 10, Baker wrote a letter to Emerald stating the Education Code did not require a license for the duties he performed (catheterizations and gavage feedings), that as soon as "this matter was brought to [his] attention, [he] took the steps necessary to have [his] license reinstated," and noted his competence had never been questioned. He appended to his letter a copy of the Board's March 3 form letter indicating a new expiration date of February 28, 2004.

Emerald telephoned Baker several times in an attempt to interview him, but he did not return her phone calls. On the morning of March 11, Emerald and her camera crew confronted Baker, but he refused to speak with her.

District employee Lillian Leopold, who was charged with distributing information to the public, provided a written response to Emerald's questions stating, inter alia:

> "In regard to Licensed Vocational Nurse Treves Baker, it is important to keep in mind that the Board of Vocational Nursing did not 'revoke' or 'suspend' Mr. Baker's license. Rather, his license expired. To imply otherwise is erroneous. Mr. Baker is indeed in the process of renewing his license. He has cooperated fully with his supervisor and has been completely forthcoming when asked about the status of his license.
>
> ". . . . . .
>
> "Again, as we have repeatedly stated, the state Education Code does not require individuals to hold a license who perform the health care duties that Mr. Baker has provided to our students. This is a

> requirement solely imposed by our district, which goes above and beyond the requirements of the Education Code. As an example, under the Education Code, health care aides can perform the duties carried out by Mr. Baker as long as they do so under the supervision of a licensed Registered Nurse. Health care aides do not hold licenses. And, in fact, a majority of school districts in California employ health care aides for these duties."

On March 12, Emerald also received some forwarded e-mails where Baker or the District identified Baker as an LVN. These e-mails originally had been sent in 2002.

On March 13, KGTV aired a "TroubleShooter" segment on the accountability of licensing of medical workers caring for "the most fragile students." In pertinent part, the segment stated:

> "Carol Le Beau: School administrators in South Bay are hard pressed to answer complaints about accountability, raised by their own employees. Accountability over licensing of medical workers who care for the most fragile students in the school district.
>
> "Fred Blankenship: Children with severe disabilities. Whistleblowers come to our Troubleshooter, and Marti Emerald joins us now with the story; Marti.
>
> "Marti Emerald: Like we so often do when complaints come in, we, of course, take those employee complaints to the school district. And quite honestly, we are stunned by their response. The Troubleshooter gets a lot of double talk, on an issue that seems pretty straightforward to most professionals caring for disabled children in the schools.
>
> "Carol Phillips: This device goes right into her stomach and then I take the little cap off and hook this up and then we start feeding her.
>
> "Marti Emerald: Carol Phillips is a registered nurse caring for severely disabled children at Field Elementary school in San Diego.
>
> "Carol Phillips: Our whole purpose is to make sure they are educated—and we want—and you have to be healthy to be educated, so we try to keep these children as healthy as possible.

"Marti Emerald: And to do that the San Diego School District strictly monitors its nursing staff and their credentials.

"Female Witness: I think it's basic accountability and quality assurance.

"Marti Emerald: Assurance these children are safe, cared for and nurtured.

". . . . . .

"Marti Emerald: But all school districts don't operate by these same standards. In one South Bay district, we find what some call a troubling lack of accountability.

"Female Whistleblower: He's been providing direct patient care for the last five years as an unlicensed person.

"Marti Emerald: This employee from the Sweetwater Union High School District wants her identity shielded for fear of reprisal. She's talking about this man, Treves Baker, who has been holding himself out to be an LVN, a Licensed Vocational Nurse. He says so in memos. The school district also identifies him as an LVN, helping to coordinate special programs and caring for disabled children. But state records show Treves Baker's LVN license expired five years ago, in February 1998.

"Female Whistleblower: The district did nothing.

"Marti Emerald: Actually, the district did respond when this embarrassing oversight was brought to their attention. The Director of Classified Personnel reassigned Baker, coordinating the schedules of LVNs in the School District, with no discipline for letting his license lapse.

[Angela Hawkins tells Emerald that Baker has been performing duties—catheterizations and g-tube feedings—that do not require a license; that she or Emerald "could do it."]

". . . . . .

"Marti Emerald: Other health professionals would take issue with that. A catheter is a tube inserted to help kids like these urinate. An

> intrusive procedure. Yet in this memo Baker is scheduled to catheterize a student as recently as last month. A procedure reserved for LVNs, according to Sweetwater's own policy.
>
> "Angela Hawkins: Well, he goes wherever the need is. So if we have one youngster [who] needs to be catheterized at one school, he leaves there and goes to the next school to catheterize another youngster.
>
> "Marti Emerald: Later, Dr. Hawkins tells us, Baker has now renewed his LVN license. But we checked with the licensing agency, the Board of Vocational Nursing, and they tell us that's not true. [Emerald confronts Baker while he attempts to drive away.] What does Treves Baker say for himself? It's going to be found out Mr. Baker because the State has spoken with you. *You know full well what the truth is and you are lying to your employer, Mr. Baker.* Do you think you can get away with this?
>
> "Which takes us back to our Whistleblower and her concerns about accountability.
>
> "Female Whistleblower: And it goes to the core of nursing in general. The public expects when you say you are a licensed vocational nurse or a registered nurse that by God you are.
>
> "Marti Emerald: Despite its own published policy, Sweetwater now tells the Troubleshooter State Education Code does not require LVNs for this work anyway, saying that the district and Mr. Baker have done nothing wrong. But the Vocational Licensing Board says differently. Investigators tells us they may cite the District and Mr. Baker for claiming he is a Licensed LVN when he is not." (Italics added.)

On May 21, the Board issued a citation and imposed a fine of $2,500 on Baker for unprofessional conduct, misrepresenting his licensure status, working as an LVN without a current license, and engaging in unethical conduct

In September, Baker filed suit against KGTV for defamation and intentional infliction of emotional distress. KGTV brought a motion to strike Baker's first amended

complaint pursuant to the anti-SLAPP statute, section 425.16. The trial court found KGTV engaged in protected activity but Baker was likely to prevail on his defamation claim and therefore denied the motion as to the defamation claim. The court granted the motion as to Baker's cause of action for intentional infliction of emotional distress because Baker had failed to present evidence showing he was likely to prevail on that claim.[2]

DISCUSSION

I

Standards for Anti-SLAPP Motions

"Section 425.16, known as the anti-SLAPP statute, permits a court to dismiss certain types of nonmeritorious claims early in the litigation." (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.)

In determining whether a motion to strike should be granted under the anti-SLAPP statute, "[f]irst, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e).' " (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) If the court finds that the defendant

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2 Baker had also sued KGTV's parent company, The McGraw-Hill Companies, Inc. The trial court dismissed The McGraw-Hill Companies, Inc., because Baker had not produced "evidence to support [his] 'alter-ego' allegations or otherwise show that this defendant is liable for the alleged tortious actions of the other defendants." Baker does not challenge the dismissal.

has made a showing that the complaint or cause of action is within the scope of the anti-SLAPP statute, the burden shifts "*and* the plaintiff must show a probability of prevailing on the claim." (*Nagel v. Twin Laboratories, Inc.* (2003) 109 Cal.App.4th 39, 45, italics added.)

"Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten, supra,* 29 Cal.4th 82, 89.) On appeal we apply a de novo standard of review. (*Padres, L.P. v. Henderson* (2003) 114 Cal.App.4th 495, 509; *Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 456.)

II

Protected Activity

"Section 425.16, subdivision (e), sets forth four categories of conduct to which the anti-SLAPP statute applies. The only way a defendant can make a sufficient threshold showing is to demonstrate that the conduct by which the plaintiff claims to have been injured falls within one of those four categories." (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1130.)

(A) Subdivision (e)(1) and (2) of Section 425.16 - Official Proceedings

The first two categories of section 425.16, subdivision (e) involve statements made in or in connection with an issue under consideration in an official proceeding.

(§ 425.16, subd. (e)(1), (2).)[3] KGTV argues these categories apply, asserting the statements were made in connection with a licensing proceeding. We disagree. The statements were neither made to the Board during a licensing proceeding nor as part of a report on the Board's proceedings. Rather, the statements were made as part of a broadcast focusing on a school district's accountability for the licensing of its employees and care of its medically fragile students. References to the Board were merely incidental and the alleged defamatory statement did not concern any official proceeding but whether Baker was lying to his employers.

Neither category of subdivision (e)(1) nor (2) of section 425.16 applies in this case.

(B) Subdivision (e)(3) of Section 425.16 - Public Forum, Place Open to the Public

The third category of section 425.16, subdivision (e) includes statements made "in a place open to the public or a public forum in connection with an issue of public interest." (§ 425.16, subd. (e)(3).)

Baker and KGTV dispute whether a television broadcast constitutes a "public forum," each citing various cases to support their positions.

Baker relies on those cases stating that, as a general rule, a privately owned newspaper, radio or television station is not public forum. These cases reason since the

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[3] Section 425.16, subdivision (e)(1) covers: "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." Section 425.16, subdivision (e)(2) covers: "any written or oral statement or writing made in connection with an issue under consideration or

medium's owner controls the material that is printed or broadcast; the medium is not a place where any member of the public has a right to express his or her views and therefore is not a public forum. For example, in *Weinberg v. Feisel, supra,* 110 Cal.App.4th at page 1130, the court held a specialty trade newsletter directed to a limited audience of token collectors was not a public forum or place open to the public, explaining: "A public forum is a place open to the use of the general public ' "for purposes of assembly, communicating thoughts between citizens, and discussing public questions." ' [Citations.] Means of communication where access is selective, such as most newspapers, newsletters, and other media outlets, are not public forums." Similarly, in *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 863, footnote 5, the court, in dicta, questioned whether a private newspaper might be considered a public forum, stating: "No authorities have been cited to us holding a newspaper printing allegedly libelous material is a 'place open to the public or a public forum.' Newspaper editors or publishers customarily retain the final authority on what their newspapers will publish in letters to the editor, editorial pages, and even news articles, resulting at best in a controlled forum not an uninhibited 'public forum.' "

KGTV relies on those cases that have found a newspaper or television broadcast can constitute a public forum. This court has agreed with the "numerous courts [that] have broadly construed section 425.16, subdivision (e)(3)'s 'public forum' requirement to include publications with a single viewpoint." (*Damon v. Ocean Hills Journalism Club*

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review by a legislative, executive, or judicial body, or any other official proceeding

(2000) 85 Cal.App.4th 468, 476; see also *Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146, 1161 [a decision by this court stating, "This court has concluded that a news publication is a 'public forum' within the meaning of the anti-SLAPP statute if it is a vehicle for discussion of public issues and it is distributed to a large and interested community"].) In *Damon*, we found a homeowner's association's newsletter to be "a public forum in the sense that it was a vehicle for communicating a message about public matters to a large and interested community." (*Damon, supra,* at p. 476.) We noted that although the newsletter did not offer a balanced view, there were alternative newsletters available. We concluded, "It is in this marketplace of ideas that the [newsletter] served a very public communicative purpose promoting open discussion—a purpose analogous to a public forum. Given the mandate that we broadly construe the anti-SLAPP statue, a single publication does not lose its 'public forum' character merely because it does not provide a balanced point of view." (*Id*. at pp. 476-477.)

Similarly, the court in *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 896-897, when addressing whether a Web site constituted a public forum, reasoned:

> "In our view, whether a statement is 'made in a place open to the public or in a public forum' depends on whether the means of communicating the statement permits open debate. We agree that [a] Web site—and most newspapers—are not public forums in and of themselves. It does not follow, however, that statements made on a Web site or in a newspaper are not made in a public forum. Where the newspaper is but one source of information on an issue, and other sources are easily accessible to interested persons, the newspaper is but one source of information in a larger public forum."

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authorized by law."

We agree with the latter cases, a local news program broadcast to the general public is a "public forum" within the meaning of section 425.16, subdivision (e)(3).

Further, a television program broadcast over the airways fits within the definition of a "public place" in the sense that the broadcast is available to any member of the public who is interested in viewing it. In contrast would be a closed circuit broadcast of a business meeting intended for only for a select group of people. Such a broadcast would involve a private place.

We conclude the statements were made in a public forum and a place open to the public.

(C) Subdivision (e)(4) of Section 425.16 - Conduct in Furtherance of the Exercise of Free Speech

The fourth category of section 425.16, subdivision (e) includes "any other conduct in furtherance of the exercise of . . . the constitutional right of free speech in connection with a public issue or an issue of public interest" (§ 425.16, subd. (e)(4)).

The Troubleshooter segment is encompassed within subdivision (e)(4) of section 425.16 since it was a news broadcast and "news reporting activity *is* free speech." (*Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1046; *Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 164 ["Reporting the news is speech subject to the protections of the First Amendment and subject to a motion brought under section 425.16, if the report concerns a public issue or an issue of public interest."].)

(D) Subdivision (e)(3) and(4) of Section 425.16 Public Interest Requirement

Both categories of subdivision (e)(3) and (4) of section 425.16 require the speech to be made "in connection with a public issue or an issue of public interest."

Baker contends the Troubleshooter segment did not involve an issue of public interest because the subject matter was limited to whether an individual employee had lied to his employer, which involved "[a]t most . . . an internal District administrative matter." To support his argument, Baker relies on *Rivero v. American Federation of State, County & Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913 (*Rivero*). *Rivero* is distinguishable.

In *Rivero*, the court held a union's articles about an individual who improperly supervised eight custodians at the "International House" did not constitute an issue of public interest or significance. The court stated:

> "[T]he Union's use of the information in its publications should not turn otherwise private information into a matter of public interest. If publication were sufficient, anything the Union published would almost automatically become a matter of public interest. For example, if the Union reported in its newsletter that a supervisor arrived late for work last Wednesday, it could then argue that tardiness in supervisors was a matter of concern in the union membership. Alternatively, the Union could publish information in an effort to increase its membership vis-à-vis a competing union, as the Union did here, and thereby turn its purely private issue into a public one. If the mere publication of information in a union newsletter distributed to its numerous members were sufficient to make that information a matter of public interest, the public-issue limitation would be substantially eroded, thus seriously undercutting the obvious goal of the Legislature that the public-issue requirement have a limiting effect." (*Rivero, supra,* 105 Cal.App.4th at p. 926.)

Baker argues that like *Rivero*, KGTV's broadcast did not turn otherwise private information about an employment matter into a matter of public interest. The television broadcast in this case, however, was not limited to an employment matter but addressed issues of broader concern. The broadcast reached beyond the status of Baker's particular license to questions generally about the care of medically fragile students and the District's accountability for their care and for the licensing of their personnel. Additionally, unlike *Rivero*, where the articles were directed to a limited audience of union members, here the broadcast was directed to a large, public audience. These distinctions make this case significantly different from the *Rivero* case. Indeed, in *Rivero*, the court, in distinguishing *M. G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623, 629 (*M.G.*), made it clear a different result would have occurred had the publication been to a wider audience and on more general issues.[4] The *Rivero* court stated:

> "In *M.G.*, the publication occurred in a major magazine and the information, whose disclosure was the subject of the lawsuit, was used to address the 'broad' and 'general' topic of child molestation in youth sports. [Citation.] Here, in contrast, two of the documents focused exclusively on the situation at the International House. The other document included additional articles, but each article was presented as a separate story, not tied together to address a larger issue. This presentation indicates that the Union was simply

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4 *M.G.* involved a Sports Illustrated article and HBO television program about molestation in youth sports by adult coaches. The story included a Little League team photograph, showing, among others, a team manager who had pleaded guilty to molesting five children he had coached in Little League. The plaintiffs who appeared in the photograph and were formerly coaches or players on the Little League team, sued for invasion of privacy and infliction of emotional distress. The *M.G.* court found the defendants had "in publishing and broadcasting on the serious topic of child molestation, exercised orally and in writing their right of free speech concerning an issue of public interest in a public forum." (*M.G., supra,* 89 Cal.App.4th at p. 629.)

> reporting the situation at International House, a situation which standing on its own has no public interest." (*Rivero, supra,* 105 Cal.App.4th at p. 926.)

Like *M.G.*, the "publication" here was to a large number of people and the subject matter—the status of Baker's license—was used to address larger issues relating to the care of medically fragile children and the responsibility of school districts to insure their personnel are properly licensed. The Troubleshooter segment was not limited to an administrative employment matter but extended to matters of general public interest.

III

Probability of Prevailing

KGTV contends Baker is unlikely to prevail on his defamation claim because the gist of Emerald's statement was true. Baker asserts his evidence was sufficient to make a prima facie showing Emerald's statement was false. He argues his evidence shows that Emerald's statement—"You know full well what the truth is and you are lying to your employer"—was not true at the time the Troubleshooter segment was broadcast because by then he was fully disclosing his licensure status to the District. He relies on his own declaration as well as those of Hawkins and Ferguson.

When the defendants have made a sufficient showing that their conduct comes within the purview of section 425.16, " 'then the burden shifts to plaintiff to establish " 'a probability that the plaintiff will prevail on the claim,' " i.e., "make a prima facie showing of facts which would, if proved at trial, support a judgment in plaintiff's favor." ' " (*Kyle v. Carmon* (1999) 71 Cal.App.4th 901, 907.) In making this determination, the court considers "the pleadings, and supporting and opposing affidavits stating the facts upon

which the liability or defense is based." (§ 425.16, subd. (b)(2).) "The burden on the plaintiff is similar to the standard used in determining motions for nonsuit, directed verdict, or summary judgment." (*Kyle v. Carmon, supra,* at p. 907.)

Defamation is an intentional tort consisting of a publication, in writing (libel) or oral (slander), that is false, defamatory and unprivileged and has a natural tendency to injure or that causes special damage to a person. (5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 471, pp. 557-558; Civ. Code, §§ 45, 46.)

To survive a challenge based upon freedom of speech protections of the First Amendment, a "plaintiff must present evidence of a statement of fact that is provably false." (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 809; *Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1401.) Truth is a complete defense to liability for defamation. (*Philadelphia Newspapers, Inc. v. Hepps* (1986) 475 U.S. 767, 768-769; *Gantry Constr. Co. v. American Pipe & Constr. Co.* (1975) 49 Cal.App.3d 186, 191-192.) The truth defense requires only a showing that the substance, gist or sting of the communication or statements is true. (*Gantry Constr. Co. v. American Pipe & Constr. Co.,* at p. 194.)

Additionally, a statement of opinion even if "objectively unjustified or made in bad faith" does not provide a legitimate basis for a defamation suit since it is not a false statement of fact. (*Jensen v. Hewlett-Packard Co.* (1993) 14 Cal.App.4th 958, 971.) "[C]ourts have defined as opinion any ' "broad, unfocused and wholly subjective comment." ' " (*Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1383.) Similarly, " 'rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative

expression[s] of . . . contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection." (*Ferlauto v. Hamsher, supra,* 74 Cal.App.4th 1394, 1401.)

Here, the gist of Baker's defamation claim was that Emerald defamed him by falsely calling him a liar, thereby causing harm to his reputation. The undisputed evidence in the record, however, establishes the gist of Emerald's statement was true. Baker had lied to the District for five years about his licensure status; he represented himself to be an LVN after his license had lapsed. Even when his license situation was exposed, he continued to mislead the District by showing them the March 3 form letter from the Board erroneously indicating his license had been renewed to February 2004. As late as March 10 after he had been informed by the Board that the March 3 form letter had been sent in error, he was still attempting to mislead others; he appended the misleading March 3 form letter to his March 10 letter to Emerald and failed to disclose to her the Board's subsequent statement the letter was in error.

Although the declarations of Baker, Hawkins, and Ferguson may have indicated that by the March 13 broadcast Baker was fully informing the District of his true licensure status, rendering Emerald's statement false in only the most technical sense, her statement was essentially true. At worst, Emerald's statement was a slight exaggeration of the period of Baker's lying, extending the time frame when he lied by a few days.

Further, Emerald had not been provided with all the information contained in the Hawkins and Ferguson declarations prior to the broadcast. Prior to the broadcast, Emerald had interviewed Hawkins on March 7. During that interview Hawkins told

Emerald Baker's license had been renewed, a statement Hawkins admitted in her declaration was false at the time she made it. Hawkins as well as another District employee wrote to Emerald between March 7 and March 13 when the segment aired. Both letters pointed out that Baker's license had not been revoked, but had expired, and stated Baker was "in the process of renewing it." These letters, however, did not establish the District was then fully aware of Baker's licensure status since the letters referred to Baker renewing his license when, as Emerald knew, Baker could not simply renew his license but had to apply for a new license and take the licensing test. Emerald could reasonably conclude the District was still not fully aware of Baker's licensure status based on: (1) Baker's attempt to mislead her with the Board's March 3 form letter; (2) Hawkins's statement in the March 7 interview that Baker had renewed his license; and (3) the District's post-March 7 letters stating Baker was in the process of "renewing" his license. Under these circumstances, Emerald's statement that Baker was lying to the District and would be found out was a true statement of known facts.

DISPOSITION

The order is reversed. The parties are to bear their own costs on appeal.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

O'ROURKE, J.